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In re Application of:
FLOSSNER, Uwe : DECISION ON PETITION TO
U.S. Application No.: 10/566,014 : CORRECT FILING DATE
PCT No.: PCT/DE2004/002005 : (37 CFR 1.10(d))
International Filing Date: 09 September 2004 :
Priority Date: 16 September 2003 :
Atty Docket No.: FLOSSNER-1 (PCT) :
For: FASTENING SYSTEM :

This decision is issued in response to the "Petition To Accord A Correct Filing Date Under 37 CFR 1.10" filed 22 February 2006, treated herein under 37 CFR 1.10(d). No petition fee is required.

BACKGROUND

On 09 September 2004, applicant filed international application PCT/DE2004/002005. The application claimed a priority date of 16 September 2003 and designated the United States. On 31 March 2005, the International Bureau (IB) communicated a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 16 March 2006.

In January 2006, applicant filed via "Express Mail" a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, and executed declaration, and a translation of the international application into English. The USPTO assigned the submission a filing date of 26 January 2006, corresponding to the "date in" on the "Express Mail" envelope used to file the application materials.

On 22 February 2006, applicants filed the petition considered herein. The petition asserts that the "Express Mail" envelope containing the present application was deposited with the USPS on 25 January 2006, and that the filing date for these materials should therefore be corrected to 25 January 2006.

DISCUSSION

As noted above, applicants assert that the materials filed to initiate the present national stage application were deposited with the USPS as "Express Mail" on 25 January 2006 and that the USPS entered the handwritten "date in" of 26 January 2006 in error.

37 CFR 1.10(d) states the following:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied all the requirements for a grantable petition. With respect to item (2), the Form PTO-1390 Transmittal Letter filed with the original application materials identified the "Express Mail" label number (EV786960664US). With respect to the showing required under item (3), applicant has provided a copy of the USPS "Track/Confirm" information for the "Express Mail" envelope which indicates that the envelope was accepted by the USPS on 25 January 2006. In addition, a review of the USPS online tracking database confirms that the USPS accepted receipt of this envelope on 25 January 2006.

Based on the above, applicant has provided an acceptable showing that the submission initiating this national stage application was deposited with the USPS as "Express Mail" on 25 January 2006. These materials will therefore properly be accorded a filing date of 25 January 2006.

CONCLUSION

Applicants' petition under 37 CFR 1.10(d) is **GRANTED**. The materials initiating the present international application, including the basic national fee, translation of the international application, and the declaration, will be accorded a filing date of 25 January 2006.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including correcting

USPTO records to identify the filing date of the basic national fee and accompanying materials to 25 January 2006. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 25 January 2006.



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